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3641 N. Pearl, Unit D, Tacoma, WA 98407 (253) 627-2062

1 THE CLERK: All rise, please. Court is again in
2 session, the Honorable Thomas S. Zilly presiding.

3 THE COURT: Good morning, ladies and gentlemen.
4 Please be seated. Clerk, please call the calendar.

5 THE CLERK: Thank you, Your Honor. Case No. CR06-466
6 Z, United States of America v. David Mendoza. For the record,
7 Counsel, will you please stand and make your appearance.

8 MS. ROE: Morning, Your Honor, Susan Roe on behalf of
9 the United States.

10 MR. COHEN: And Richard Cohen on behalf of the United
11 States.

12 THE COURT: Good morning, Counsel.

13 MR. TVEDT: Good morning, Your Honor, Colette Tvedt on
14 behalf of David Mendoza.

15 MR. ROBINSON: And Jeffrey Robinson on behalf of David
16 Mendoza who is present in the courtroom.

17 THE COURT: Good morning, Mr. Mendoza. The Court has
18 been advised that the Defendant has entered into a written plea
19 agreement which he asks this Court to approve; is that correct?

20 MS. ROE: Yes, Your Honor.

21 MS TVEDT: Yes, Your Honor.

22 THE COURT: Mr. Mendoza, there are a number of
23 questions that I want to ask you under oath to be sure you know
24 exactly what is happening. Your decision is voluntary and you
25 understand the consequences if you enter into this plea

1 agreement today, so I'm going to ask you to approach the podium
2 with your counsel. I'm going to ask these questions of you
3 under oath. At any time if you want to talk to your lawyer
4 before you answer my question, please just do so off the record.
5 If you don't understand any question I ask, please let me know
6 and I will and rephrase it. Will you raise your right hand to
7 be sworn by the clerk, please.

8 **DAVID MENDOSA**, after having been duly sworn in by the Court
9 testified as follows:

10 THE DEFENDANT: Yes, I do.

11 THE COURT: Mr. Mendoza, do you understand that having
12 been sworn, your answers to my questions now are subject to the
13 penalties of perjury or making a false statement if you don't
14 answer them truthfully?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. How old are you, sir?

17 THE DEFENDANT: 44 years old, sir.

18 THE COURT: What does your education consist of?

19 THE DEFENDANT: I have a graduate degree from the
20 University of Washington.

21 THE COURT: In what subjects?

22 THE DEFENDANT: International business.

23 THE COURT: Have you ever been treated for any mental
24 disease or disorder?

25 THE DEFENDANT: No, I have not, sir.

1 THE COURT: Are you on any medication at the present
2 time?

3 THE DEFENDANT: No, I am not.

4 THE COURT: Do you understand completely what is
5 happening here today?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: Does any counsel have any doubt as to the
8 competency of the Defendant to enter a plea should he decide to
9 do so today?

10 MS. ROE: None from the government, Your Honor.

11 MS TVEDT: No, Your Honor.

12 THE COURT: All right. The Court finds that Mr.
13 Mendoza is competent to enter a plea. Have you had ample
14 opportunity to discuss the case with your lawyers?

15 THE DEFENDANT: Yes, I have, Your Honor.

16 THE COURT: Are you completely satisfied with your
17 lawyers' representations of you in this case?

18 THE DEFENDANT: Yes, I am, Your Honor.

19 THE COURT: Do you understand that under the
20 Constitution and laws of the United States, you are entitled to
21 a trial by jury of the charges against you?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: Let me ask you this: Are you -- have you
24 seen and are you familiar with the superseding indictment
25 charging you with several counts in this case?

1 THE DEFENDANT: Am I familiar with that?

2 THE COURT: Yes.

3 THE DEFENDANT: Yes, I am, sir.

4 THE COURT: You waive the reading of the superseding
5 indictment here in open court this morning?

6 THE DEFENDANT: That's correct, Your Honor.

7 THE COURT: Now, you understand that if we did have a
8 trial, you are presumed innocent, the government would be
9 required to prove your guilt by competent evidence beyond a
10 reasonable doubt before you could be found guilty?

11 THE DEFENDANT: Yes, I am, Your Honor.

12 THE COURT: In other words, you don't have -- you
13 would not have to prove anything. The government would have the
14 total burden to prove beyond a reasonable doubt your guilt; do
15 you understand?

16 THE DEFENDANT: I do understand that, sir.

17 THE COURT: Do you understand that if we did have a
18 trial, that the witnesses for the government would have to come
19 into court and testify in your presence and your lawyers could
20 cross examine the witnesses, object to evidence offered by the
21 government and offer evidence on your behalf?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And do you understand that if we did have
24 a trial, that while you have the right to testify if you wish to
25 do so at that time, you'd also have the right not to testify.

1 And if you exercise the right not to testify, there would be no
2 inference or suggestion of guilt because you exercised your
3 Fifth Amendment right to remain silent; do you understand?

4 THE DEFENDANT: Yes, I do, sir.

5 THE COURT: If you exercise that right to remain
6 silent, we would tell the Jury that you have that Constitutional
7 right and there should be nothing that the Jury should consider
8 as a result of your failure to testify; do you understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: All right. Do you understand that if we
11 had a trial and you were found guilty, you have a right to
12 appeal that guilty finding?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And if you can't afford a lawyer in any
15 part of the process, or costs of going forward with the trial or
16 an appeal, the government would pay for those attorneys or
17 costs; do you understand?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Now, do you understand that if you plead
20 guilty and I accept your plea, that you give up the right to a
21 trial and the other rights I have discussed? There won't be a
22 trial and we will enter a judgment and sentence you based on
23 your guilty plea after considering a presentence report.

24 THE DEFENDANT: I do understand this, Your Honor.

25 THE COURT: Now, let me just ask you again whether

1 you've had ample opportunity to discuss the superseding
2 indictment with your lawyers.

3 THE DEFENDANT: I have, Your Honor.

4 THE COURT: And do you understand each of the charges
5 against you, sir?

6 THE DEFENDANT: Yes, I do, Your Honor.

7 THE COURT: Has anyone threatened or mistreated or
8 pressured you in any way to force a plea of guilty?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Has there been any plea agreement between
11 you and the government other than the written plea agreement
12 that has been handed up to me today?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: I have been handed a -- a 11-page plea
15 agreement dated June 19, 2009; is this your signature on the
16 first line of the last page, sir?

17 THE DEFENDANT: Yes, it is, Your Honor.

18 THE COURT: Did you read this plea agreement before
19 you signed it?

20 THE DEFENDANT: I read it fully, Your Honor.

21 THE COURT: Do you understand it, sir?

22 THE DEFENDANT: Yes, I do, Your Honor.

23 THE COURT: We're going to go over it in some detail,
24 but this is the plea agreement that you are agreeing to plead
25 to; is that right?

1 THE DEFENDANT: That's correct, sir.

2 THE COURT: And has there been any promises made to
3 you other than what is contained in the written plea agreement?

4 THE DEFENDANT: No, Your Honor.

5 THE COURT: Now, if we go through this plea agreement
6 and I accept the plea but not the plea agreement as is my intent
7 today, that means that you will be bound by the plea agreement
8 and you cannot withdraw that plea before sentencing unless you
9 can establish a fair and just reason for requesting a
10 withdrawal; do you understand that?

11 THE DEFENDANT: Yes, I do, Your Honor.

12 THE COURT: And that would require you to find newly
13 discovered evidence, intervening circumstances or other reasons
14 for which withdrawing the plea did not exist at the time you
15 entered into the plea today; do you understand that?

16 THE DEFENDANT: I do, Your Honor.

17 THE COURT: And ultimately assuming I accept the plea
18 and the plea agreement and sentence you, and I know it's a
19 binding sentence under 11(c)(1)(C), you won't be able to
20 withdraw that plea once you hear me accept it and sentence you;
21 do you understand that?

22 THE DEFENDANT: I understand this, Your Honor.

23 THE COURT: Do you understand that at sentencing I
24 would make a determination of what the sentencing guidelines
25 would be and I would also then consider in determining whether

1 to accept the plea agreement all of the factors under the
2 statute 3553 that I'm required to consider, which are outlined
3 in the plea agreement; do you understand?

4 THE DEFENDANT: I do, sir.

5 THE COURT: All right. Let me just run through this
6 plea agreement again and if you would follow along with me, sir.
7 Do you understand that this plea agreement contemplates that you
8 will plead guilty to Count 1 of the superseding indictment which
9 alleges a conspiracy to import more than 1,000 kilograms of
10 marijuana in violation of federal law; do you understand that?

11 THE DEFENDANT: I do, Your Honor.

12 THE COURT: And do you understand that in order for
13 the government to prove you guilty of that conspiracy in Count
14 1, they would have to prove the elements which are set forth in
15 paragraph two of this plea agreement, and they are that there
16 was an agreement between two or more people to commit the acts
17 which constituted a crime, that is, to import marijuana; and
18 two, that the Defendant became a member of the conspiracy
19 knowing of its objects and intending to help accomplish at least
20 one of its objectives; and further the government would have to
21 prove beyond a reasonable doubt the conspiracy involved more
22 than 1,000 kilograms of marijuana; do you understand that?

23 THE DEFENDANT: I do, sir.

24 THE COURT: And do you understand that by entering
25 into this plea agreement, you are waiving your right to require

1 the government to make proof regarding the weight of the
2 controlled substance, and you stipulate that this plea of guilty
3 includes your agreement and acknowledgment that the offense
4 involved more than 1,000 kilograms of marijuana?

5 THE DEFENDANT: I understand, Your Honor.

6 THE COURT: All right. Do you understand as outlined
7 in paragraph three of the plea agreement that if you plead
8 guilty, the statutory penalties for the offense are a term of up
9 to life with a mandatory minimum sentence of ten years
10 imprisonment, a fine of up to \$4 million, a period of supervised
11 release following release from prison at least five years and a
12 \$100 penalty assessment; do you understand that?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: And do you understand that supervised
15 release is a period of time following your imprisonment when you
16 would be subject to various restrictions and requirements, that
17 if you violated would -- could cause you to be returned to
18 prison for violation of your supervised release?

19 THE DEFENDANT: I understand that, sir.

20 THE COURT: Do you understand that the -- your guilty
21 plea would also include, and it's outlined further later in this
22 plea agreement, the forfeiture of various property which are
23 outlined in the plea agreement; do you understand that?

24 THE DEFENDANT: I do, sir.

25 THE COURT: And do you understand that in addition to

1 a sentence of any special assessments, fines, costs, restitution
2 and the like would be due and payable immediately?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: All right. Do you understand in paragraph
5 four which we -- we have gone through these rights, but I want
6 to just be sure you understand that you are waiving all of these
7 rights by agreeing to the plea, and that is the right to plead
8 not guilty and persist in your plea of not guilty, the right to
9 a speedy and public trial before a jury, and I believe we
10 continued the jury trial as a result of the hearing a couple of
11 weeks ago and we have a trial date now set in I believe early
12 September, but you understand that if you don't plead guilty,
13 you have got that trial date in place?

14 THE DEFENDANT: I do, Your Honor.

15 THE COURT: All right. And, in addition, you -- you
16 waive the right to effective assistance of counsel at trial and
17 the right to have the Court appoint you a lawyer if you could
18 not afford one; the right to be presumed innocent until guilt
19 has been established beyond a reasonable doubt; the right to
20 confront and cross examine witnesses against you at trial; the
21 right to compel or subpoena witnesses to appear on your behalf;
22 the right to testify or remain silent and the fact that such
23 silence would not be used against you; and the right to appeal
24 the finding of guilt or any pretrial ruling; do you understand
25 all of those would be waived pursuant to this plea and this plea

1 agreement?

2 THE DEFENDANT: I understand this, Your Honor.

3 THE COURT: Now, I have indicated that in connection
4 with sentencing the Court would consider the sentencing range
5 calculated by the guidelines and the other factors contained in
6 Section 3553(a) and it will be basically those factors which the
7 Court will consider in determining ultimately whether to accept
8 the plea agreement at the time of sentencing; do you understand
9 that?

10 THE DEFENDANT: Yes, I do, sir.

11 THE COURT: Now, as I understand it, this sentencing
12 agreement pursuant to paragraph six and pursuant to Federal Rule
13 of Criminal Procedure 11(c)(1)(C), you agree that the
14 appropriate sentence be imposed by me at the time of sentencing
15 is a term of 168 months or a total of 14 years and the
16 forfeiture of the four real properties set forth in paragraph 13
17 of the plea agreement; do you understand that?

18 THE DEFENDANT: That's correct, sir.

19 THE COURT: And if I reject any portion of the
20 agreement, both you and the government portion reserve the right
21 to withdraw from the agreement pursuant to Rule 11(c)(1)(C) and
22 proceed to trial?

23 THE DEFENDANT: I understand that, sir.

24 THE COURT: And you acknowledge in paragraph seven
25 that nobody has acknowledged or promised or guaranteed what the

1 sentence will be, that will be up to me, but of course, if I
2 don't sentence you to 14 years, then one side or the other will
3 have the right to withdraw?

4 THE DEFENDANT: I understand this, Your Honor.

5 THE COURT: Paragraph eight outlines a lengthy
6 statement of facts which the parties and you agree that the
7 government will prove, can prove at trial. I'm not going to
8 read all of those facts stated in paragraph eight, but let me
9 ask you this first: Have you carefully read all of those facts
10 stated in paragraph eight?

11 THE DEFENDANT: Yes, I have, Your Honor.

12 THE COURT: Are they all true and correct?

13 THE DEFENDANT: Yes, they are, sir.

14 THE COURT: And you agree that the government could
15 prove each of the facts stated in paragraph eight; is that
16 right?

17 THE DEFENDANT: That is correct, sir.

18 THE COURT: Now, paragraph nine talks about a waiver
19 of appeal, and do you understand that as part of this plea
20 agreement that on the condition that the Court imposes the
21 sentence 14 years that you waive any right to appeal the
22 sentence, including any restitution order, any right to bring a
23 collateral attack against the conviction and sentence, including
24 any restitution order imposed except as it may relate to the
25 effectiveness of the legal representation?

1 THE DEFENDANT: That is correct, sir.

2 THE COURT: And this waiver would not preclude you
3 from bringing an appropriate motion to address conditions of
4 confinement or the decisions of the Bureau of Prisons regarding
5 the execution of the sentence; do you understand that?

6 THE DEFENDANT: I do, Your Honor.

7 THE COURT: And do you understand if the -- if you
8 breach the plea agreement at any time by appealing or
9 collaterally attacking or continuing any appeal which you might
10 have already filed, conviction -- or the conviction of
11 sentencing in any way, the government could prosecute you for
12 any counts, including those with the additional mandatory
13 minimum sentences that would be dismissed at the time of
14 sentencing?

15 THE DEFENDANT: I understand this, Your Honor.

16 THE COURT: Do you understand that you are pleading to
17 Count 1, one conspiracy, but the superseding indictment has
18 numerous other counts, some of which include another statutory
19 minimum I believe of an additional ten years. All of those
20 additional counts would be dismissed at the time of sentencing
21 should I agree with you and accept the plea agreement.

22 THE DEFENDANT: I understand this, Your Honor.

23 THE COURT: Now, I know that paragraph ten is
24 important to you, so I want to review it carefully. Is it your
25 understanding as part of this plea agreement that the United

1 States Attorney's Office for this district, Western District of
2 Washington has agreed that if you plead guilty and if I accept
3 that plea agreement, that they would not prosecute either you or
4 your wife, Elizabeth Arnett Mendoza, for any additional offenses
5 known to and at the time of this agreement based upon the
6 evidence in its possession at this time or that arise out of the
7 conduct having given rise to this investigation; is that your
8 understanding?

9 THE DEFENDANT: That's my full understanding, Your
10 Honor.

11 THE COURT: And in this regard you understand that the
12 United States has agreed not to prosecute all the criminal
13 charges the evidence establishes were committed by the defendant
14 or his wife -- or your wife solely because of the promises made
15 by the Defendant in this agreement; is that your understanding?

16 THE DEFENDANT: Yes, it is, Your Honor.

17 THE COURT: And as I understand it for purposes of
18 understanding what that evidence is, we're going to be relying
19 upon the presentence report and the United States Attorney's
20 Office to provide Probation with the evidence of all of this
21 conduct so that we'll know exactly what it is that the
22 government is agreeing not to prosecute.

23 THE DEFENDANT: Okay.

24 THE COURT: Is that your understanding as well, sir?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And paragraph 11 of this plea agreement
2 talks about acceptance of responsibility and the three level
3 reduction, but as I understand it in calculating the guidelines
4 that all of this has been taken into account in arriving at the
5 14-year sentence that everybody has agreed to but the judge at
6 this point; is that your understanding?

7 THE DEFENDANT: That's my understanding, sir.

8 THE COURT: All right. And do you understand if you
9 breach this plea agreement in any way, the government can move
10 to withdraw from the plea agreement and you and your wife may be
11 prosecuted for all of the offenses for which the government has
12 evidence?

13 THE DEFENDANT: I understand, sir.

14 THE COURT: Do you further agree that this plea
15 agreement contemplates that if you after the date of this
16 agreement engage in any illegal conduct or conduct that is in
17 violation of the conditions of release or confinement, including
18 obstruction of justice, failure to appear, criminal conduct
19 which is pending sentencing, false statements and the like, the
20 government is free under the agreement to file additional
21 charges or seek a sentence which takes such account or conduct
22 into consideration?

23 THE DEFENDANT: I understand this, Your Honor.

24 THE COURT: Paragraph 13 deals with forfeiture and you
25 agree to forfeit to the United States immediately all right,

1 title and interest in various properties. Those properties are
2 described in paragraph 13 in the plea agreement at the bottom of
3 page nine and the top of page ten; do you understand that you
4 are giving up all rights in connection with all those
5 properties?

6 THE DEFENDANT: I do, Your Honor.

7 THE COURT: Now as I understand it, one or more of
8 those properties may have been the subject of earlier orders of
9 this Court ordering that forfeiture and you may have appealed
10 some or all of those orders. As I understand it, this plea
11 agreement would contemplate that you will give up any appeals
12 that you may have already filed and you give up and agree to
13 forfeit any interest in all of these properties; is that right?

14 THE DEFENDANT: That's how I understand it also, Your
15 Honor.

16 THE COURT: All right. Let me just ask you again,
17 because it's important that I make findings, have you entered
18 into this plea agreement freely and voluntarily?

19 THE DEFENDANT: Yes, I have, Your Honor.

20 THE COURT: Have there been any threats or promises,
21 other than the promises contained in this plea agreement made to
22 you to induce you to enter into this plea agreement?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: And, once again, does this plea agreement
25 then contain the entire agreement between you and the

1 government?

2 THE DEFENDANT: Yes, it does, Your Honor.

3 THE COURT: Do you have any questions about the plea
4 agreement that you wish to ask?

5 THE DEFENDANT: No, honestly I think we have covered
6 it very fully.

7 THE COURT: Pardon me?

8 THE DEFENDANT: No, Your Honor I think we covered it.

9 THE COURT: Does the government believe there is
10 anything that we have not covered in the colloquy with the
11 Defendant that --

12 MS. ROE: No, Your Honor.

13 THE COURT: -- needs to be addressed?

14 MS. ROE: No, Your Honor. I believe it's been covered
15 adequately, more than adequately.

16 THE COURT: Defense counsel, do you have anything that
17 needs to be addressed?

18 MS TVEDT: Nothing further, Your Honor.

19 THE COURT: All right. Having heard everything that
20 has been said concerning your rights today and the consequences
21 if you plead guilty, do you still wish to enter a plea to Count
22 1?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: What is your plead to Count 1 of the
25 superseding indictment, guilty or not guilty, sir?

1 THE DEFENDANT: Guilty, Your Honor.

2 THE COURT: All right. Pursuant to the federal rules
3 I will accept the plea but defer a decision on the plea
4 agreement, meaning that I want to look at the presentence
5 report, understand exactly what other defendants that I really
6 have no involvement with, what their sentences were before I
7 make a final decision. But I would have to say that having
8 listened to and what I know about the case, I see no reason at
9 this point not to say that this sounds like a reasonable effort
10 on both sides to reach a settlement and a plea, but I'm not
11 going to formally bind myself until I have had an opportunity to
12 have the benefit of the presentence report.

13 But I will say for the record that I make the following
14 findings now: I find that the Defendant is fully competent to
15 enter a plea at this time; that the plea is made voluntarily and
16 freely with an understanding of the nature of the charges and
17 the consequences of the plea; and that the Defendant did commit
18 the crime charged in Count 1 of the superseding indictment as I
19 understand it. As I understand it, and I'm not sure we covered
20 it in the colloquy, but at the time of sentencing all of the
21 other counts will be dismissed at the time and if I accept the
22 plea agreement and sentence the Defendant in accordance with; is
23 that the understanding of the government as well?

24 MS. ROE: Yes, Your Honor. In addition at the time of
25 sentencing, if the Court accepts the plea agreement, the

1 government would move to dismiss the sentencing enhancement.

2 THE COURT: All right. And is that your understanding
3 as well, sir?

4 THE DEFENDANT: Yes, it is, Your Honor.

5 THE COURT: All right. Thank you. I'm going to order
6 a presentence report as I do in every case. I would ask you and
7 encourage you to cooperate with the probation officer in
8 furnishing information to that person. That person will then
9 prepare a pre -- your lawyer can be present when you talk with
10 the probation.

11 THE DEFENDANT: Okay, Your Honor.

12 THE COURT: You don't have to talk to them, but I
13 encourage you to do so because it will provide the most
14 information we can provide in determining whether to accept or
15 reject the plea agreement ultimately. You will have a chance to
16 review the presentence report even before I see it. If your
17 lawyers have or you have any objections to it, you can make
18 those objections known to the probation officer. Ultimately I
19 will receive a presentence report. You will have a copy of the
20 final one and even after -- even then if you have continuing
21 objections to any portion of it, you can make your objections
22 known to the government and to me at the time of the hearing to
23 accept or reject the plea agreement and to sentence you. We're
24 going to set a sentencing date of -- do we have a probation
25 officer here in court?

1 MS. ROE: They usually request at least ten weeks I
2 know.

3 THE COURT: I understand. I'm going to set it for
4 Thursday September 24, 2009, 1:30. Is that a date agreeable to
5 Counsel?

6 MS. ROE: Yes, Your Honor.

7 MS TVEDT: Yes, Your Honor.

8 THE COURT: All right. Anything further that we need
9 to cover today?

10 MS. ROE: Not from the government, Your Honor.

11 MS TVEDT: No, Your Honor.

12 THE COURT: All right. We'll be in recess.

13 THE CLERK: All rise, please. Court is in recess.

14 THE COURT: Just a moment. I think that -- well, I
15 don't -- I have accepted the plea. I don't think I signed the
16 plea agreement. It will be filed. We'll be in recess.

17 THE CLERK: Court is in recess.

18 (Proceeding concluded 11:47 a.m.)

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C E R T I F I C A T E

STATE OF WASHINGTON)

) SS

COUNTY OF KING)

I, Donna Hunter, Certified Court Reporter and Notary Public
duly and qualified in and for the State of Washington do hereby
certify that the foregoing transcript is a true and correct
transcript of my original stenographic notes.

I further certify that I am neither attorney or counsel
for, nor related to or employed by any of the parties to the
action in which this testimony is taken; and furthermore, that I
am not a relative or employee of any attorney or counsel
employed by the parties hereto or financially interested in the
action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed
my Notarial Seal this 31st day of October, 2009.

/S/Donna Hunter

NOTARY IN AND FOR THE STATE OF

WASHINGTON, RESIDING IN SEATTLE